

STATE OF INDIANA )  
 ) SS:  
COUNTY OF GRANT )

IN THE GRANT CIRCUIT COURT

CAUSE NO.

27001-0203-PL-216

STATE OF INDIANA, )

Plaintiff, )

v. )

JOSE GONZALES, individually and )  
doing business as GONZALES )  
CONSTRUCTION, )

Defendant. )

**FILED**

MAR 18 2002

*Carolyn J. Mowery*  
CLERK GCC

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS AND CIVIL  
PENALTIES**

The State of Indiana, by Attorney General Steve Carter, and Deputy Attorney General Roger D. Smith, in accordance with Rule 3 of the Indiana Rules of Trial Procedure, petitions the court pursuant to the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 et seq., and the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11 et seq., for injunctive relief, consumer restitution, civil penalties, investigative costs and other relief.

**PARTIES**

1. The Defendant, Jose Gonzales (Gonzales), at all times relevant to this complaint was owner of and did business as Gonzales Construction at 1704 South Boots Street, Marion, Indiana, 46953.

2. At all relevant times, Defendant was engaged in or solicited home improvement contracts.

### **FACTS**

3. At least since March 19, 2000, Defendant has acted as a home improvement supplier by engaging in or soliciting home improvement contracts.

4. On March 20, 2000, Defendant entered into a contract with Kim and Terri Walker ("the Walkers") of Fairmount, Indiana, wherein Defendant agreed to install roofing and siding on the Walkers' home as well as a room addition with kitchen cabinets, plumbing and electrical work on the Walkers' home for a price of twenty nine thousand dollars (\$29,000.00). A true and correct copy of Defendant's contract with the Walkers is attached and incorporated by reference as Exhibit "A."

5. Defendant failed to include the following information in the home improvement contract entered into with the Walkers:

- (a) the address of Defendant;
- (b) the telephone number of the Defendant;
- (c) the names of any agent to whom consumer problems and inquiries can be directed;
- (d) the date of the home improvement contract was submitted to the consumer;
- (e) any time limitations on the consumer's acceptance of the home improvement contract;
- (f) the approximate completion date of the home improvements;
- (g) a statement of any contingencies that would materially change the approximate completion date; and

(h) a legible printed or a typed version of the Defendant's and consumers' names placed directly after or below the signature.

6. Defendant failed to obtain the necessary plumbing license for the home improvement work prior to any work commencing under the terms of the home improvement contract.

7. On June 12, 2001, Defendant entered into a contract with the Walkers wherein Defendant agreed to complete the bathroom plumbing and windows, complete the fireplace and garage as well as install cabinet doors at the Walkers' home for a price of two thousand dollars (\$2,000.00). A true and correct copy of Defendant's contract with the Walkers is attached and incorporated by reference as Exhibit "B."

8. Defendant failed to include the following information in the home improvement contract entered into with the Walkers and referred to in paragraph 7 above:

(a) the address of the residential property that is the subject of the home improvement;

(b) the address of Defendant;

(c) the telephone numbers of the consumers and Defendant;

(d) the names of any agent to whom consumer problems and inquiries can be directed;

(e) any time limitations on the consumer's acceptance of the home improvement contract;

(f) specifications for the home improvement or a statement that the specifications will be provided to the consumer before commencing any

work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(g) the approximate starting date of the home improvements;

(h) a statement of any contingencies that would materially change the approximate completion date; and

(i) signature lines for the Defendant or Defendant's agent and for each consumer with a legible printed or a typed version of the Defendant's and consumers' names placed directly after or below the signature.

9. At the time the home improvement contracts identified in paragraphs 4 and 7 were entered into with the Walkers, Defendant represented by implication that all work would be completed within a reasonable period of time.

10. Defendant started but did not complete the work contracted for under the Walkers' home improvement contracts.

11. On or around June 11, 2001, Defendant entered into a contract with Richard and Pamela Poling ("the Polings") of Fairmount, Indiana, wherein Defendant agreed to tear out and install a wall and flooring, as well as install windows, siding, and gutters at the Polings' home for a price of seven hundred fifty dollars (\$750.00). A true and correct copy of Defendant's contract with the Polings is attached and incorporated by reference as Exhibit "C."

12. Defendant failed to include the following information in the home improvement contract entered into with the Polings:

(a) the address of the residential property that is the subject of the home improvement;

- (b) the address of Defendant;
- (c) the telephone numbers of the consumers and Defendant;
- (d) the names of any agent to whom consumer problems and inquiries can be directed;
- (e) the date of the home improvement contract was submitted to the consumer;
- (f) any time limitations on the consumer's acceptance of the home improvement contract;
- (g) specifications for the home improvement or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (h) the approximate starting and completion dates of the home improvements;
- (i) a statement of any contingencies that would materially change the approximate completion date; and
- (j) signature lines for the Defendant or Defendant's agent and for each consumer with a legible printed or a typed version of the Defendant's and consumers' names placed directly after or below the signature.

13. Defendant failed to sign the home improvement contract.

14. Defendant failed to include in the home improvement contract entered into with the Polings the dates the Defendant and the consumers executed the contract.

15. At the time the home improvement contract was entered into with the Polings, Defendant represented by implication that all work would be completed within a reasonable period of time.

16. Defendant started but did not complete the work contracted for under the Polings' home improvement contract.

**COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT**

17. The services described in paragraphs 4, 7 and 11 above are "home improvements" as defined by Ind. Code § 24-5-11-3.

18. The transactions referred to in paragraphs 4, 7 and 11 above are "home improvement contracts" as defined by Ind. Code §24-5-11-4.

19. Defendant is a home improvement supplier as defined by Ind. Code §24-5-11-6.

20. By failing to obtain the necessary plumbing license prior to the commencement of any home improvement work at the Walkers' home, as referred to in paragraph 6, Defendant violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-9.

21. By failing to provide the Walkers and Polings with completed home improvement contracts containing the information referred to in paragraphs 5 , 8 and 12 above, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

22. By failing to sign the home improvement contract with the Polings, as referred to in paragraph 13, Defendant violated Ind. Code § 24-5-11-11.

23. By failing to provide the Polings with completed home improvement contracts containing the dates the Defendant and the consumers executed the contract, as referred to in paragraph 14 above, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-12.

**COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

24. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

25. The transactions referred to in paragraphs 4, 7, and 11 above are “consumer transactions” as defined by Ind. Code §24-5-0.5-2(a)(1).

26. Defendant is a “supplier” as defined by Ind. Code §24-5-0.5-2(a)(3).

27. The violations of the Indiana Home Improvement Contracts Act referred to in paragraphs 5, 6, 8, 10, 12, 13, 14, and 16 constitute deceptive acts.

28. By failing to complete the work under the Defendant’s contract with the Walkers, as referred to in paragraph 10, Defendants violated Ind. Code § 24-5-0.5-3(a)(10) by failing to complete the work within a reasonable amount of time.

29. By failing to obtain the necessary plumbing license prior to the commencement of any home improvement work, as referred to in paragraph 6, Defendant violated Ind. Code § 24-5-0.5-10(a)(1)(A) by soliciting to engage in a consumer transaction without a permit or other license required by law.

30. The misrepresentations and deceptive acts set forth above will continue and will cause irreparable injury unless Defendant is enjoined from engaging in further conduct that violates Ind. Code §24-5-11-1 et seq. and Ind. Code §24-5-0.5-1 et seq.

**COUNT III - KNOWING AND INTENTIONAL VIOLATIONS OF  
THE DECEPTIVE CONSUMER SALES ACT**

31. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 30 above.

32. The misrepresentations and deceptive acts set forth in paragraphs 5, 6, 8, 10, 12, 13, 14, and 16 were committed by Defendant with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendant for a permanent injunction enjoining Defendant from:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a completed home improvement contract which includes at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

(2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

(4) A reasonably detailed description of the proposed home improvements;



(5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(6) The approximate starting and completion date of the home improvements;

(7) A statement of any contingencies that would materially change the approximate completion date;

(8) The home improvement contract price; and

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;

c. in the course of entering into home improvement transactions, failing to provide a fully executed copy of the home improvement contract that includes the dates the supplier and each consumer executed the contract to the consumer immediately after the consumer signs it;

d. in the course of entering into home improvement transactions, failing to obtain the necessary license prior to the commencement of any home improvement work;

e. representing, expressly or by implication, that Defendant is able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when Defendant knows or should reasonably know he cannot;

f. cancellation of contracts pursuant to Ind. Code §24-5-0.5-4(d);

g. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2) in an amount to be determined at trial;

h. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

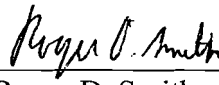
i. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;

j. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana; and

k. all other just and proper relief.

Respectfully submitted,

STEVE CARTER  
Attorney General of Indiana  
Atty. No. 4150-64

By:   
Roger D. Smith  
Deputy Attorney General  
Atty. No. 23152-49

Office of Attorney General  
Indiana Government Center South  
402 W. Washington, 5th Floor  
Indianapolis, IN 46204  
Telephone: (317) 233-3972  
42397

## EXHIBIT

A in 3 parts

TO <u>Kim Walker</u>
ADDRESS _____
ATTENTION _____

DATE ORDERED _____	ORDER TAKEN BY _____
PHONE NO. _____	CUSTOMER ORDER _____
JOB _____	
JOB PHONE _____	STARTING DATE _____
TERMS _____	

QTY.	MATERIAL	UNIT	AMOUNT	DESCRIPTION OF WORK
19	Roofing	pick up at Carter's		Clear off old roofing & siding. Remove peak from back lay new roofing and siding, add gingle board to house
6	rolls of #30 felt			
16	pieces of drip edge			
56	Sheets of 7/16 O.S.B			
6	Roof Vents			
1-2"	Roof boot			
1-1 1/2"	Roof boot			
1-4"	Roof boot			
	Siding			
20	Roof Siding (3")	pick up at Merardo's		
80	pieces of J channel			
24	stair steps			
26	F Channel			
6	White outside corners			
24	pieces of white			
7	bundles of 1/2" board			
1	roll of White wrapping			
11	Windows			
1	bay window?			
	Gutters			

## MISCELLANEOUS CHARGES:

Owner has already  
got permits from  
area planning

## LABOR HRS. RATE AMOU

First payment of  
\$11,500

WORK ORDERED BY

DATE ORDERED

DATE COMPLETED

LA 4 to 5 weeks

CUSTOMER APPROVAL  
SIGNATURE

AUTHORIZED SIGNATURE

TOTAL LABOR

TOTAL MATERIALS

TOTAL MISCELLANEOUS

SUBTOTAL

TAX

GRAND TOTAL

TO Kim Walker

ADDRESS \_\_\_\_\_

ATTENTION \_\_\_\_\_

DATE ORDERED \_\_\_\_\_ ORDER TAKEN BY \_\_\_\_\_

PHONE NO. \_\_\_\_\_ CUSTOMER ORDER \_\_\_\_\_

JOB LOCATION \_\_\_\_\_

JOB PHONE \_\_\_\_\_ STARTING DATE \_\_\_\_\_

TERMS \_\_\_\_\_

QTY.	MATERIAL	UNIT	AMOUNT	DESCRIPTION OF WORK
160	Concrete blocks			Good 10x34 frame
17	bags of mortar mix #160			dig out footer pour
16	foundation bolts			concrete. knock out a
30	Sheets of 7/16 D.S.B			3x4 foot well install kitchen
12	Sheets of 3/25 sub floor			Cabinets, elec. plumbing, tax
24	Sheets of Drywall 4x8 1/2"			and floor. finish with white
11	Sheets of drywall 4x8 5/8"			
3	1x6x8			MISCELLANEOUS CHARGES:
7	1x6x10			9 end of cement for
125	2x4 8 foot long			footers
60	2x8x10			
8	2x8x20			
4	2x12x12			
9	2x6x10 Top choice SPF treated			
1	2x8x10 Top choice SPF treated			
4	2x8x6 Top choice SPF treated			
6	2x6x20 Top choice SPF treated			
12	rolls of R12 6x6x15			
24	rolls of ceiling Ins R19 4x16			
2	foam seal rolls			

WORK ORDERED BY \_\_\_\_\_

DATE ORDERED \_\_\_\_\_

DATE COMPLETED In 4 to 5 weeks

CUSTOMER APPROVAL SIGNATURE K. Walker

AUTHORIZED SIGNATURE Joe Monzo 3/20/2000

TOTAL LABOR	
TOTAL MATERIALS	
TOTAL MISCELLANEOUS	
SUBTOTAL	
TAX	
GRAND TOTAL	

TO Kirk Walker

ADDRESS \_\_\_\_\_

ATTENTION \_\_\_\_\_

DATE ORDERED \_\_\_\_\_ ORDER TAKEN BY \_\_\_\_\_

PHONE NO. \_\_\_\_\_ CUSTOMER ORDER \_\_\_\_\_

JOB LOCATION \_\_\_\_\_

JOB PHONE \_\_\_\_\_ STARTING DATE \_\_\_\_\_

TERMS \_\_\_\_\_

QTY.	MATERIAL	UNIT	AMOUNT	DESCRIPTION OF WORK
24	pieces of 10" Alum fascia			Will remove all
2	Cases of Calceon White			debr from premises
1	250 ft 2 1/2" 110 Wiring			
4	junction boxes			
812	outlets			
	Miscellaneous			
2	boxes of Cal nails 1 1/2"			
25	lb box of roofing nails 1 1/2"			
2	boxes of #16			
2	boxes of #10			
1	box of #8			
1	box of pvc primer			
1	can of pvc glue			
2	1/2" of pvc			
4	1/2" of pvc			
1	1/2" p trap			
2	5 gallon Mud			
1	5 gallon primer			
1	roll of paper tape			
Does not include price of				Cabinets and floor tile

WORK ORDERED BY \_\_\_\_\_

DATE ORDERED \_\_\_\_\_

DATE COMPLETED In 4 to 5 weeks

CUSTOMER APPROVAL SIGNATURE K. Walker

AUTHORIZED SIGNATURE Jose Gonzalez Jr 3/20/2000

TOTAL LABOR	
TOTAL MATERIALS	
TOTAL MISCELLANEOUS	
SUBTOTAL	
TAX	
GRAND TOTAL	27000

# GONZALES CONSTRUCTION

# Statement

Number: 1001

Date: June 12, 2001

Bill To:

KIM WALKER

Ship To:

## Description

## Amount

WHEN JOB IS COMPLETE I SHALL RECEIVE MY PAYMENT OF 2000.00

2,000.00

NO LATER THAN 7 DAYS AFTER COMPLETION OF JOB (w/bank)

THE COMPLETION OF THIS IS THE BATHROOM UPSTAIRS, HANGING UP THE DOORS FOR THE CABINETS, BOXING THE FIREPLACES IN, (OWNER IS TO START GETTING THE FLUTES FOR THE FIREPLACES) FINISH THE TALL CABINET FOR KITCHEN, PUT O.S.B UP IN GARAGE CEILING, HANG UP TWO OUTSIDE

LIGHTS, ANYTHING ELSE IS CONSIDERED A ADD ON AND THERE WILL BE A CHARGE FOR IT.

finish windows upstairs & bedroom  
New pannel on garage door (bottom) hooking  
up garage door opener plumbing in

OWNERS SIGNATURE R. Wall DATE 6/13/01

OWNER IS TO GET ANY MATERIAL THAT IS NEEDED IN 2 TO 3 DAYS FROM DAY OF SIGNATURE

NO WORK IS TO BE STARTED UNTIL CONTRACT IS SIGNED BY OWNER.

THANK YOU.

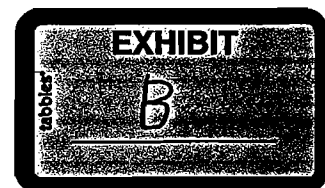
bathroom, electrical plugs in garage  
mud closet upstairs, finish routing  
cabinet doors & track lights top & bottom  
Lights in garage, 2 outside faucets.

Total

\$2,000.00

May be held up due to  
guide on router maybe  
3 weeks (2 day for work)  
July 15 Job done

Joe Gonzales  
6/12/01



0 - 30 days	31 - 60 days	61 - 90 days	> 90 days	Total
\$2,000.00	\$0.00	\$0.00	\$0.00	\$2,000.00

DATE: 1/1	<input type="checkbox"/> SERVICE <input checked="" type="checkbox"/> INSTALL	<input type="checkbox"/> WILL CALL <input checked="" type="checkbox"/> DELIVER	PHONE:
NAME: <i>Richard</i>	MAKE:		MODEL:
ADDRESS:	SERIAL:		
ITEM TO BE SERVICED:		NATURE OF SERVICE REQUEST:	

QUAN	DESCRIPTION OF PARTS OR MATERIALS	AMOUNT
	45 blocks	80.00
16'x4	Mar out floor	
	Mar out, 8" wall	
	Build new floor on top of floor	250.00
	1" x 1" 3" x 12" studs	150.00
	1" x 4" x 12" joists	75.00
	1" x 6" x 12" joists	100.00
	1" x 8" x 12" joists	150.00
	1" x 10" x 12" joists	200.00
	1" x 12" x 12" joists	250.00
	1" x 14" x 12" joists	300.00
	1" x 16" x 12" joists	350.00
	1" x 18" x 12" joists	400.00
	1" x 20" x 12" joists	450.00
	1" x 22" x 12" joists	500.00
	1" x 24" x 12" joists	550.00
	1" x 26" x 12" joists	600.00
	1" x 28" x 12" joists	650.00
	1" x 30" x 12" joists	700.00
	1" x 32" x 12" joists	750.00
	1" x 34" x 12" joists	800.00
	1" x 36" x 12" joists	850.00
	1" x 38" x 12" joists	900.00
	1" x 40" x 12" joists	950.00
	1" x 42" x 12" joists	1000.00
	1" x 44" x 12" joists	1050.00
	1" x 46" x 12" joists	1100.00
	1" x 48" x 12" joists	1150.00
	1" x 50" x 12" joists	1200.00
	1" x 52" x 12" joists	1250.00
	1" x 54" x 12" joists	1300.00
	1" x 56" x 12" joists	1350.00
	1" x 58" x 12" joists	1400.00
	1" x 60" x 12" joists	1450.00
	1" x 62" x 12" joists	1500.00
	1" x 64" x 12" joists	1550.00
	1" x 66" x 12" joists	1600.00
	1" x 68" x 12" joists	1650.00
	1" x 70" x 12" joists	1700.00
	1" x 72" x 12" joists	1750.00
	1" x 74" x 12" joists	1800.00
	1" x 76" x 12" joists	1850.00
	1" x 78" x 12" joists	1900.00
	1" x 80" x 12" joists	1950.00
	1" x 82" x 12" joists	2000.00
	1" x 84" x 12" joists	2050.00
	1" x 86" x 12" joists	2100.00
	1" x 88" x 12" joists	2150.00
	1" x 90" x 12" joists	2200.00
	1" x 92" x 12" joists	2250.00
	1" x 94" x 12" joists	2300.00
	1" x 96" x 12" joists	2350.00
	1" x 98" x 12" joists	2400.00
	1" x 100" x 12" joists	2450.00

LABOR PERFORMED: <i>1/1/01</i>	TOTAL MATERIALS: <i>1500.00</i>
TAX: <i>150.00</i>	TOTAL LABOR: <i>150.00</i>
TOTAL AMOUNT: <i>150.00</i>	

DATE MAINTAINED: *1/1/01*

ESTIMATES ARE FOR LABOR ONLY, MATERIAL ADDITIONAL. WE WILL NOT BE RESPONSIBLE FOR LOSS OR DAMAGE CAUSED BY FIRE, THEFT, TESTING OR ANY OTHER CAUSES BEYOND OUR CONTROL.

**JOB WORK ORDER ORIGINAL**

AUTHORIZED BY: *[Signature]*

TERMS: NET CASH  
NO GOODS HELD OVER 30 DAYS

15868

EXHIBIT

C